(196)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

Writ Petition No.2692 of 1999

PETITIONER : Dr. Aboobakar Hingora S/o Late Shri H.M.I. Hingora, aged about 51 years, Occupation – Homeopath Physician, resident of Gulmarg Ice Factory, Mana Road, Tikarapara, Raipur (M.P.)

VERSUS

RESPONDENTS

1. The State of Madhya Pradesh through the Revenue Secretary Vallabh Bhawan, Bhopal (M.P.)
2. The Upper Commissioner, Raipur Division (Revenue) Raipur (M.P.)
3. The Collector, Kawardha District Kawardha (M.P.)
4. The Sub Divisional Officer, Pandaria, District Kawardha (Prior to formation of Kawardha District Sub-Divisional Officer, Lormi, District – Bilaspur)
5. The Additional Collector District Kawardha (old District Bilaspur, M.P.)

6(a). Smt. Sindurita Shah, W/o Sanjeev Kumar, Aged about 25 years, R/o Opp. Rajmahal, Pandariya, Distt. Kabirdham (Kawardha) (C.G.)

Present: Dr. Aboobakar Hingora, petitioner in person.
Shri Yaswant Singh, learned G.A. for respondents 1 to 5/ State.
Shri Ashish Shrivastava, learned counsel for respondent No. 6(a).

ORAL ORDER
(Passed on 23rd June, 2006)

This writ petition arises out of the proceedings initiated by the Sub Divisional Officer, Pandaria, District Kawardha, the 4th respondent

herein under Section 170-B of the Chhattisgarh Land Revenue Code, 1959 (for short "the Code"). All the Statutory Authorities under the Code have held against the petitioner. Hence, this writ petition.

2. The background facts leading to filing of this writ petition, in brief, are as follows:

Late Kumar Lal Bigendra Shah was an Ex-Ruler of the Princely State of Chhura, Tahsil, Gariyaband in Raipur District and he held large extent of agricultural lands. The said Kumar Lal Bigendra Shah with an intention to sell his agricultural lands situate in Pandatarai village, applied to the Additional Collector, Bilaspur (now District Kawardha), the 5th respondent herein, under sub-Section (6) of Section 165 of the Code. The said application was registered as Revenue Case No. 107-A-21-84-85. The 5th respondent by his order dated 30-09-1985 granted the permission under Section 165(6) of the Code to Kumar Lal Bigendra Shah to sell the lands incorporating certain conditions in the order. Accordingly, Kumar Lal Bigendra Shah by three sale deeds executed on 18-10-1985, 02-12-1985, 02-12-1985 sold 44.43 acres of agricultural land in aggregate to the petitioner for a total consideration of Rs.1,33,400/-. At this stage itself, it needs to be noticed that the 5th respondent while granting permission under Section 165 (6) of the Code, in his order, had stipulated that Kumar Lal Bigendra Shah himself should appear before the Sub Registrar and execute the sale instrument. The second condition incorporated in the permission order was that the consideration should be paid to the vendor in the presence of Sub Registrar. It further appears that on 05-12-1985 Kumar Lal Bigendra Shah also sold the remaining of 4.06 acres of agricultural land situate in Pandatarai village also to the petitioner for consideration.

3. When the matter stood thus, it appears that Patwari Halka No. 11 of village Pandatarai submitted a report dated 29-09-1996 to the 4th respondent herein informing the latter that Kumar Lal Bigendra Shah belonged to aboriginal tribe of Gond and he sold 40.7 acres of agricultural land situate in village Pandatarai out of Khata No. 22 to the petitioner and the petitioner is in possession of the lands. On the basis of the said report of the Patwari, the 4th respondent registered Revenue Case No. 392-A-23/96-97, under Section 170-B of the Code and directed issuance of notice to the petitioner. In response to the notice, the petitioner submitted his reply. By that time Kumar Lal Bigendra Shah had died and therefore, his widow, namely, Smt. Krishna Shah impleaded herself as a party-respondent to the case. The 4th respondent, after conducting enquiry, by his order dated 24-07-1997 held that the execution of the sale deeds by the Power of Attorney holder of Kumar Lal Bigendra Shah was not in strict compliance with the condition imposed by the 5th respondent while granting sanction. Further, the 4th respondent held that the consideration fixed by the 5th respondent was not paid to the vendor in the presence of the Sub Registrar as directed by him. In the premise of the above findings, the 4th respondent held that the sale transactions between Kumar Lal Bigendra Shah and the petitioner are not *bonafide* and legal. The 4th respondent, therefore, directed that the subject lands be mutated in the name of the ex-Ruler and possession of the subject lands be delivered to the ex-Ruler or to the legal representatives of the Ruler in case of his death.

4. The petitioner feeling aggrieved by the said order of the 4th respondent dated 24-07-1997, preferred an appeal under Section 44(1)

of the Code to the Collector, Bilaspur who in turn transferred the said appeal to the Collector, Kawardha, the 3rd respondent hereinafter formation of new District of Kawardha. The 3rd respondent by his order dated 15-02-1999 dismissed the appeal and confirmed the order of the 4th respondent dated 24-07-1997. The petitioner feeling aggrieved by the said order of the 3rd respondent preferred a revision under Section 50 of the Code to the Upper Commissioner, Raipur Division, the 2nd respondent herein, who by his order dated 04-06-1999 rejected the revision of the petitioner. The petitioner feeling aggrieved by the orders of the respondents 2, 3 and 4, has preferred this writ petition.

5. I have heard Dr. Aboobakar Hingora, petitioner herein who appeared in person and the learned counsel appearing for the respondents in length. In the course of hearing, learned Advocate General was also requested to assist the Court. Learned Advocate General gracefully assisted the Court and if I may say so, in all fairness, he submitted that Section 170-B of the Code is not attracted to the facts of this case and therefore, initiation of the proceedings by the 4th respondent under Section 170-B of the Code was not proper. However, according to the learned Advocate General, Clause (ii) of sub-Section (1) of Section 170 of the Code applies to the facts of this case. Section 170-B of the Code has no application to the facts of this case is not only the case of the petitioner but it is the accepted case of all the parties.

6. Sub-Section(1) of Section 170-B of the Code reads as follows:

> "(1) Every person who on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an

aboriginal tribe under sub-Section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land."

It is nobody's case that the petitioner was in possession of the subject lands between 02-10-1959 and 24-10-1980 and admittedly, he came into possession of the subject lands in pursuance of the three sale deeds executed in his favour on 18-10-1985 and 02-12-1985. Therefore, initiation of the proceedings by the 4th respondent under Section 170-B was *ex facie* misconceived.

7. Sub-Section (1) of Section 170 reads as follows:-

"170. Avoidance of transfer in contravention of Section 165-(1) Where possession is transferred by a Bhumiswami in pursuance of a transfer which is in contravention of sub-Section (6) of Section 165 any person who, if he survived the Bhumiswami without nearer heirs would inherit the holding, may, --

(i) till the 31st December 1978, in the case of transfer of possession prior to the 1st July 1976; and

(ii) within twelve years of such transfer of possession, in subsequent cases,

apply to the Sub-Divisional Officer to be placed in possession subject so far as the Sub-Divisional Officer may, in accordance with the rules made in this behalf determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, and the Sub-Divisional Officer shall dispose of such application in accordance with the procedure as may be prescribed."

8. In view of the submission of the learned Advocate General that the provisions of clause (ii) of sub-Section (1) of Section 170 of the Code is attracted to the facts of this case, but, without forming any opinion about the correctness or otherwise of the said submission, but in order to satisfy itself whether the petitioner was appraised of the allegations which could constitute a valid ground to initiate the proceeding under clause (ii) of sub-Section (1) of Section 170 of the Code, the Court wanted the Government Advocate to produce the show-cause notice issued by the 4th respondent to the petitioner. Today, at the time of hearing, learned Government Advocate having perused the original records would submit that no show-cause notice containing the allegations against the petitioner, in the form of a show-cause notice was issued to the petitioner and that only the notice of hearing of the case was issued to the petitioner. The Court wanted to peruse the notice in order to know that the show-cause notice issued under Section 170-B of the Code by the 4th respondent, if any, has contained the material allegations, if true, would constitute a cause of action/ground for initiating the proceeding under clause (ii) of sub-Section (1) of Section 170 of the Code. It needs to be noticed, at this stage, that the ground to initiate proceedings under Section 170-B of the Code is altogether different from the ground on the basis of which a proceeding could be initiated under clause (ii) of sub-Section (1) of Section 170 of the Code.

9. Affected should be appraised before an adverse action is taken is a constitutional creed flowing from Article 14 of the Constitution. If the petitioner who has purchased the subject lands for consideration under the registered sale deeds is liable to be divested of his lands on any

permissible grounds, it is the requirement of law that he should be told clearly and precisely what are the grounds made out against him and he should be given a fair opportunity of defending himself and meeting the case of the State Authorities. That has not been done in this case. In other words, the impugned order passed by the 4th respondent is void *ab initio* for utter violation of the principles of natural justice and fair play in action. On that short ground, I allow the writ petition and quash all the impugned orders. However, this order shall not come in the way of the Statutory Authorities from taking appropriate action under the appropriate provisions of the Code, in accordance with law, if they are of the opinion that the sale transactions between Late Kumar Lal Bigendra Shah and the petitioner are illegal or irregular and the subject lands have to be restored to the legal representatives of the ex-Ruler. No costs.

Sd/-
Chief Justice